IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4650 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVINDBHAI NANJIBHAI MEKHIYA

Versus

JOINT SECRETARY REVENUE DEPARTMENT (APPEALS)

Appearance:

1. Special Civil Application No. 4650 of 2004

MR MB PARIKH for Petitioner No. 1

MR DIPEN DESAI, Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 06/12/2004

ORAL JUDGEMENT

1. Rule. Mr.Desai, learned AGP waives service of notice of rule on behalf the respondent authorities and

with the consent of the parties the matter is taken up for final hearing today.

2. The short facts of the case are that the petitioner applied for conversion of the land for non-agricultural purpose in the year 1998 and thereafter on 11.1.1989 the permission for non-agricultural purpose was granted. The petitioner had to complete the construction as per the conditions of N.A. within a period of three years from the date of the order, which would come to 1992. It appears that in the year 1996 the petitioner applied for approval of revised lay-out plan by changing the location of the plots and in response that to, instead of considering the said application, show-cause notice was issued by the respondent No.2 for breach of the condition of N.A. of not completing the construction within the stipulated time limit. The petitioner submitted reply. Ultimately on 27.5.1998 the Collector, Amreli passed the order for imposing the penalty of 40 times of the revenue assessment being Rs.24,284/=. The petitioner carried the matter before the State Government in revision which ultimately came to be rejected and under the circumstances, the petitioner has approached this Court by preferring this petition.

3. Heard Mr.Parikh, learned Counsel for the petitioner and Mr.Desai, learned AGP for the respondents.

4. It appears that there is no dispute on the factual aspect that as per the conditions, while converting the land for N.A. purpose, it was provided to complete the construction within a period of three years and the said period has expired on 11.1.1992. However, the grievance of the petitioner is that as such the petitioner had applied for approval of the revised lay-out plan in the year 1996 and instead of considering the matter for such purpose, the authority has issued the show-cause notice for breach of the condition and has imposed penalty to the fullest extent without even considering the internal circular of the Government that for the first breach maximum penalty can be imposed of ten times revenue and, therefore, it has been submitted by Mr.Parikh that the imposition of penalty of 40 times is unreasonable and arbitrary. Mr.Parikh also submitted that as such the petitioner is now not desirous to even continue the land as non-agricultural land and has applied to the respondent Collector for converting the land into agricultural land and the said application is pending before the District Collector and, therefore, he submitted that the order passed by the Collector of imposing penalty and its confirmation thereof by the

State Government be quashed and set aside.

5. Mr.Desai, learned AGP on behalf of the respondent authorities submitted that as per Rule 100 of the Government Land Revenue Rules, 1972 (hereinafter referred to as the "Rules") the penalty can be imposed upto 40 times non-agricultural assessment and, therefore, it cannot be said that the order is without jurisdiction. Mr.Desai also submitted that the petitioner has admittedly not made construction even till today and, therefore, if the said period is considered, it cannot be said that the imposition of penalty by the authority is unreasonable or arbitrary and, therefore, he submitted that the orders passed by both the authorities are legal and valid and this Court may not interfere with the said order.

6. Having considered the above, it appears that as per the government instructions which are produced in the other connected matter being SCA No.12483/2004, it has been provided, inter alia, that when it is a matter of first breach and if the land is converted for residential purpose, the penalty of ten time is to be imposed and if it is a second breach in case of such land only, the penalty of 20 times revenue assessment be imposed and it is also mentioned that no extension should be granted third time. However, in the said instruction, it has also been stated that after collecting the said penalty when it is the case of breach for the first time, extension can be granted for two years and if it is breach of second time, further extension can be granted for two years more and thereafter third time no extension can be granted.

7. In the present case the petitioner has not applied for extension but the petitioner had approached the Collector for grant of approval for revised lay-out plan in the year 1996 and as observed earlier, the period of three years is over, but the proceedings cam to be initiated for breach for the first time as per the show-cause notice and subsequently the impugned order. It appears that the District Collector while considering the question for quantum of penalty has not considered the aforesaid Government circular, nor has he considered as to whether the maximum penalty is called for or not. In a matter where the penalty is to be imposed, it is required for the authority to consider as to whether it is on account of voluntary action on the part of the person who commits breach of the condition or it is on account of the circumstances beyond the control of the holder of the property. Further as per the decision of

this Court in the case of "Dahyabhai Laldas(Deceased) through his heirs and legal representatives: Bhikhubhai Dahyabhai Patel & Ors. v. State of Gujarat and Anr.", reported in 1997 (2) GLH, 633, the conditions for making construction are held to be directory and not mandatory Therefore, keeping in view the aforesaid aspects, it was required for the Collector to examine and thereafter to take decision as to what could be the sufficient quantum of punishment or penalty.

8. I would have considered the matter for quashing of the penalty and for directing for remand, however, in view of the peculiar facts and circumstances that in any case the petitioner has not made construction till today and the petitioner is not desirous to convert the land for non-agricultural purpose and even if the date mentioned by the petitioner for approval of revised lay-out plan is considered, it can be said that the period of four years had admittedly expired even on the date when the petitioner applied for approval of revised lay-out plan and till then no construction was made and in addition to the initial period of three years, further period of four years had expired on the date when the Collector initiated the proceedings for breach of the conditions for N.A. Therefore, considering the overall facts and circumstances, it appears that the Collector could at the most impose the penalty of 20 times revenue assessment in the year 1996 when the proceedings came to be initiated and he ought not to have imposed penalty to the maximum extent i.e. of 40 times.

9. Under the above facts and circumstances, the impugned order passed by the Collector of imposing penalty exceeding twenty times revenue assessment deserves to be quashed and set aside. Even the State Government while examining the revision has also not considered the said aspect and, therefore, consequently the order passed by the State Government also can be said as illegal to that extent by committing error apparent on the face of record.

10. Hence the impugned order passed by the Collector and its confirmation thereof by the State Government for maximum of penalty and exceeding 20 times revenue assessment are quashed and set aside. Consequently the petitioner will be liable to pay penalty of 20 times of revenue assessment, which the petitioner is directed to make the payment within a period of two months from today.

11. The petition is partly allowed to the aforesaid

extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, no order as to costs.

6.12.2004 (Jayant Patel, J.)

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